

REMARKS

The present Amendment is in response to the Official Action mailed March 25, 2008. Claims 1, 4, and 9 have been amended, and claim 11 has been canceled. Thus, claims 1-4, 6-10, and 13 remain pending in the present case. The following sets forth Applicants remarks pertaining to the currently pending claims and the outstanding Action.

As an initial matter, Applicants thank the Examiner for conducting the telephone interview of May 6, 2008 with their undersigned counsel. In that discussion, which is conformed by the Examiner's Interview Summary of May 14, 2008, the rejections set forth in the Action were discussed, as were possible claim amendments. Specifically, possible amendments of the claims which overcome the anticipatory rejections of claims 1-3 in view of U.S. Patent No. 6,277,149 to Boyle et al. ("*Boyle*") and the obviousness rejections of claims 4, 6-11, and 13 in view of the combination of *Boyle* and U.S. Patent No. 5,306,308 to Gross et al. ("*Gross*") were discussed. Applicants have amended independent claims 1, 4, and 9 above in accordance with these discussions.

Specifically, independent claims 1, 4, and 9 of the present case have been amended to each require a beveled edge extending around the spacer body circumference. This limitation is not taught by either *Boyle* or *Gross*. During the May 6th telephone discussion, the Examiner agreed that these amendments overcame anticipatory rejections set forth in the Action in view of *Boyle* and *Gross*, but noted the possibility of combining those two references with a third reference; namely, U.S. Patent No. 5,571,190 to Ulrich et al. ("*Ulrich*") in order to reject the claims as obvious. The Examiner pointed to Figs. 6 and 7 of *Ulrich* as possibly teaching the aforementioned bevel edge limitation of amended independent claims 1, 4, and 9. However, Applicants respectfully point out that the edge of *Ulrich* cited

by the Examiner (reference numeral 10) is not a beveled edge at all. Rather, this is simply a set of teeth disposed on the upper surface of the implant of *Ulrich*. This is confirmed by even a cursory review of Fig. 7. As such, Applicants respectfully submit that even the combination of *Boyle*, *Gross*, and *Ulrich* does not teach each and every one of the limitations of the above-amended claims.

Furthermore, Applicants respectfully submit that independent claim 9 adds an additional limitation not taught by any of the prior art references. That claim requires at least one relative angle designation mark on each of the upper and lower surfaces. Simply put, none of *Boyle*, *Gross*, or *Ulrich* teach such an element. Applicants also note that similar limitations are included in dependent claims 3 and 8.

In conclusion, Applicants respectfully submit that the currently pending claims are neither anticipated nor obviated by the prior art of record. In the aforementioned May 6th telephone discussion, the Examiner expressed a concern as to the present case being allowed based solely upon the beveled edge limitation. In other words, the Examiner expressed a concern as to that element being the "patentable feature" of the present invention. Applicants note here that it is not just the beveled edge limitation that defines the present invention from the prior art, but also certain of the other limitations of the claims. Each of the cited prior art references lacks specific elements of the claims. For instance, none of the references teach the beveled edge limitation, *Gross* does not teach a substantially flat upper and lower surfaces, and *Ulrich* does not teach an axial medial groove. Applicants do not make any admission as to what those references do in fact teach. However, Applicants do note that the presently pending claims incorporate a combination of elements not taught by the prior art. As such, Applicants respectfully submit that it is not

just one feature that renders the presently pending claims patentable.

In light of all of the above, Applicants respectfully submit that the currently pending claims constitute allowable subject matter. Although each of the dependent claims are not specifically discussed herein, Applications note that such claims are allowable based solely upon their dependence from one of independent claims 1, 4, or 9, or an intervening claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 20, 2008

Respectfully submitted,

By 

Kevin M. Kocun

Registration No.: 54,230

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants